

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TODD RICHARD PROKASKY,

Petitioner,

v.

PATRICK GLEBE,

Respondent.

CASE NO. C12-5134 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 19) and Petitioner Todd Richard Prokasky’s (“Prokasky”) objections to the R&R (Dkt. 20).

On June 11, 2012, Judge Strombom issued the R&R recommending that the Court dismiss Prokasky’s petition with prejudice because it is time-barred and Prokasky has failed to show exceptional circumstances that would toll the applicable time period. Dkt. 19. Prokasky objects and argues that he has shown extraordinary circumstances. Dkt. 20. Prokasky contends that the initial 308 days should be tolled because he was unaware that he received ineffective assistance of counsel until his attorney sent him a letter informing Prokasky that he may not have entered into his plea fully informed of the law.

1 *Id.*; *see also* Dkt. 2, Exh. G (counsel's letter). If these were the only facts in the record,
2 Prokasky would have some argument for extraordinary circumstances. Prokasky,
3 however, admits that he was informed by the law clerk at the Department of Corrections
4 that he had entered into his plea without full knowledge of the law. Dkt. 2 at 7.
5 Therefore, Prokasky has failed to show that circumstances beyond his control made it
6 impossible for him to timely file his petition. *United States v. Battles*, 362 F.3d 1195,
7 1197 (9th Cir. 2004) (quoting *Laws v. Lamarque*, 351 F.3d 919, 922 (9th Cir. 2003)).

8 The Court having considered the R&R, Prokasky's objections, and the remaining
9 record, does hereby find and order as follows:

- 10 (1) The R&R is **ADOPTED**;
- 11 (2) Prokasky's petition for habeas corpus (Dkt. 6) is **DENIED**;
- 12 (3) A certificate of appealability is **DENIED**; and
- 13 (4) This case is closed.

14 Dated this 6th day of September, 2012.

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17 BENJAMIN H. SETTLE
United States District Judge

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